

## REMARKS

In response to the outstanding Office Action applicants respectfully request allowance of the present application in view of the foregoing amendments and the remarks which follow.

Claim 28 is objected to, but the Applicant believes that the grammatical error cited by the Examiner is actually in claim 26. Appropriate amendment to claim 26 is made herein.

The rejections of claims 35-41 under 35 USC 101 and 35 USC 102 are rendered moot because those claims are cancelled herein.

The rejection of claim 28 under Section 112 is fully addressed by way of amendment herein.

Claims 24-30 were rejected under Section 102 as anticipated by Roberts (U.S. 6,920,110), and claims 31-34 were rejected under Section 103 based on Roberts in view of Pupura (U.S. 2003/0043846). In response to these rejections claim 24 is amended. However, applicants also traverse the rejection for failure to identify in the prior art every feature recited in the examined claims. Claim 24 now even more clearly specifies subject matter absent from the prior art.

By way of example, the rejection identified col. 3, lines 3-8 and lines 12-14 of Roberts as disclosing the examined feature of

"determining if a present bandwidth is sufficient for transmission of the demanded software within a specified time limit ..."

but none of the cited text discloses this feature. Moreover, the claim has been amended to now specifically recite

"prior to initiating transmission of the software component, determining via the bandwidth test if a present bandwidth is sufficient for transmission of the demanded software component within a specified time limit ..."

The rejection cites Roberts at col. 10, lines 6-12 with regard to the following feature (amended) of claim 24:

"inhibiting the transmission of the demanded software component if the bandwidth test determines that the present bandwidth is insufficient for real time transmission of the component"

but the text only appears to describe that which is well-known, i.e., a situation wherein there would not be sufficient bandwidth to download a set of data (e.g., a software update) ... without degrading other network activity. Applicants claim a different criterion, and determining sufficiency of bandwidth for real time transmission of a software component is not the same as what is disclosed by Roberts.

The rejection of dependent claim 25 is also in error, as Roberts does not disclose that a required bandwidth is calculated according to a specified upper limit for a transmission time. Instead col. 8, lines 13-29 of Roberts describes determinations of thresholds (e.g., 33% Of a maximum detected utilization level). See also Figure 7. This has nothing to do with applicants' feature of determining a bandwidth requirement based on a limit of transmission time (i.e., for sending the software component).

The citation (col. 2, lines 39-49) of Roberts is also insufficient to read the feature of claim 28 on the prior art. Applicants set forth two alternate criteria for a positive test result permitting transmission of the component while the citation from Roberts pertains to measurement of actual bandwidth usage and managing data transfer relative to the threshold level of utilization (e.g., 33% Of a maximum detected utilization level). See again Figure 7.


It is submitted that rejection of the other claims which depend from claim 24 is also in error based on the above distinctions and inclusion of features which further define novel and non-obvious combinations. The citation of passages from Purpura does not at all appear consistent with that which is claimed. The citations pertain to blocking an FTP session under circumstances of insufficient bandwidth while all of the claims concern transmission of a demanded software component within a specified time limit. The combination does not result in that which is recited in each of the claims 31-34. Argument to the contrary must recite each component for assembly into the claimed combination. This has not and cannot be demonstrated.

Conclusion

For all of the above reasons allowance of claims 24-29 is requested. The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16(c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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By:   
John P. Musone  
Registration No. 44,961  
(407) 736-6449

Siemens Corporation  
Intellectual Property Department  
170 Wood Avenue South  
Iselin, New Jersey 08830